

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LONNIE L. JACKSON,

Plaintiff,

v.

JASON SMITH, JEFFREY JABER,
JON HIBBARD, LORI MEITZEN,
TROY EHNERT, RANDY J. SPRANGERS,
HANS KUSTER, WENDY CARIVOU
and DOUG DEMOTTS,

Defendants.

ORDER

10-cv-212-bbc

In this prisoner civil rights case, plaintiff Lonnie L. Jackson alleged five claims against defendants for alleged violations of his constitutional rights in relation to an incident that occurred in October 2008. Defendants moved for summary judgment on the ground that plaintiff had failed to exhaust his administrative remedies for any of his claims because he did not file a timely grievance about the October 2008 incident. Plaintiff opposed the motion and averred that he did file a timely grievance in October 2008. Because a factual dispute existed on this question, a hearing was held in this case on March 25, 2011 to resolve the dispute. Pavey v. Conley, 544 F.3d 739,742 (7th Cir. 2008) (judge should decide question of exhaustion after hearing when factual dispute exists).

As I explained to plaintiff at the hearing, I find that he did not file a grievance in October 2008. His assertions to the contrary are not credible. Instead, plaintiff filed his one and only grievance about the October 2008 incident in October 2009. Because that grievance was untimely, plaintiff failed to exhaust his administrative remedies. In light of this conclusion, defendants are entitled to judgment on their defense that plaintiff failed to exhaust his administrative remedies for any of his claims. Those claims are DISMISSED without prejudice to plaintiff's exhausting those remedies and filing a new complaint after he has properly exhausted. The clerk of court is directed to enter judgment in favor of defendants Jason Smith, Jeffrey Jaber, Jon Hibbard, Lori Meitzen, Troy Ehnert, Randy J. Sprangers, Hans Kuster, Wendy Carivou and Doug DeMotts and close this case.

Entered this 25th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge